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263 NLRB No. 39

D--9102
Salt Lake City, UT

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MOON CONSTRUCTION COMPANY

and

Case 27--CA--7277

LOCAL 184, UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF
AMERICA

DECISION AND ORDER

Upon a charge filed on April 24, 1981, by Local 184, United Brotherhood of Carpenters and Joiners of America, herein called the Union, and duly served on Moon Construction Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 27, issued a complaint on May 29, 1981, against Respondent, alleging that Respondent had engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. On September 4, 1981, the Union and Respondent entered into a settlement agreement and, on April 28, 1982, the Regional Director issued an order revoking settlement agreement, complaint, and notice of hearing. Copies of the order, charge, and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

263 NLRB No. 39

On May 24, 1982, the General Counsel, by counsel, filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on May 28, 1982, the Board issued an order transferring the proceeding to the Board and Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Board's Notice To Show Cause and the averments of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that unless an answer was filed to the complaint within 10 days from the service thereof "all of the

allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.'" As noted above, Respondent failed to answer the complaint or respond to the Notice To Show Cause.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file an answer, the allegations of the complaint are deemed admitted and are found to be true,¹ and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent, a Utah company with its principal office and place of business at Salt Lake City, Utah, is engaged in the construction business. Respondent, in the course and conduct of its business operations, annually performs services valued in excess of \$50,000 for other firms which, annually in the course of their operations within the State of Utah, individually purchase and receive materials and services valued in excess of \$50,000 directly from firms located outside Utah.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act,

¹ We note that the complaint specifically alleges that since on or about September 4, 1981, Respondent has failed and refused to comply with the terms of the Parties' settlement agreement.

and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Local 184, United Brotherhood of Carpenters and Joiners of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Unit and the Union's Representative Status

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All carpenter employees employed by Respondent, but excluding office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

At all times since July 1, 1978, the Union has been the representative for the purposes of collective bargaining of the employees in said unit, and is now the exclusive representative of all of the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

B. The Refusal To Bargain

Since or about October 24, 1980, the Union has requested, and is requesting, Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all employees in the above-described unit. Since on or about October 24, 1980, and at all times thereafter, Respondent did refuse and continues to refuse to meet and to bargain collectively with the Union as the exclusive collective-bargaining representative of

all the employees in the above-described unit. Further, since on or about October 24, 1980, Respondent has refused to supply information and submit to a payroll audit relating to the payment of health, pension, and apprentice benefits under a collective-bargaining contract in effect between the Union and Respondent.

Accordingly, we find that, by the conduct described above, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit. In addition, we shall order that Respondent furnish the Union with information and submit to a payroll audit relating to the payment of health, pension, and apprentice benefits under the collective-bargaining agreement in effect between the Union and Respondent.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Moon Construction Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 184, United Brotherhood of Carpenters and Joiners of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All carpenter employees employed by Respondent, but excluding office clerical employees, and all guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since on or about July 1, 1978, the above-named labor organization has been the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 24, 1980, and at all times thereafter, to meet and to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit; and by refusing on or about October 24, 1980, and at all times thereafter, to furnish the Union with information and to submit to a payroll audit relating to the payment of health, pension, and apprentice benefits under a collective-bargaining contract in effect between the Union and

Respondent, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By the aforesaid conduct, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Moon Construction Company, Salt Lake City, Utah, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to meet and to bargain collectively regarding rates of pay, wages, hours, and other terms and conditions of employment with Local 184, United Brotherhood of Carpenters and Joiners of America, as the exclusive representative of the employees in the following appropriate unit:

All carpenter employees employed by Respondent, but excluding office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

(b) Refusing to furnish the Union with information and to submit to a payroll audit relating to the payment of health,

pension, and apprentice benefits under a collective-bargaining contract in effect between the Union and Respondent.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit described above regarding rates of pay, wages, hours, and other terms and conditions of employment.

(b) Upon request, furnish the Union with information and submit to a payroll audit relating to the payment of health, pension, and apprentice benefits under a collective-bargaining contract in effect between the Union and Respondent.

(c) Post at its Meadowmoor Road, Salt Lake City, Utah, facility copies of the attached notice marked "'Appendix.'"² Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C.

August 13, 1982

John R. Van de Water, Chairman

Howard Jenkins, Jr., Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to meet and to bargain collectively regarding rates of pay, wages, hours, and other terms and conditions of employment with Local 184, United Brotherhood of Carpenters and Joiners of America, as the exclusive representative of the employees in the following appropriate unit:

All carpenter employees employed by the Employer, but excluding office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

WE WILL NOT refuse to furnish the Union with information and submit to a payroll audit relating to the payment of health, pension, and apprentice benefits under a collective-bargaining contract in effect between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit described above regarding rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL, upon request, furnish the Union with information and submit to a payroll audit relating to the payments of health, pension, and apprentice benefits under a collective-bargaining contract in effect between us and the Union.

MOON CONSTRUCTION COMPANY

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 260 New Custom House, 721 19th Street, Denver, Colorado 80202, Telephone 303--837--3553.